

HOUSE BILL REPORT

HB 2541

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to maximizing the ecosystem services provided by forestry through the promotion of the economic success of the forest products industry.

Brief Description: Maintaining a base of forest lands that may be used for commercial forestry.

Sponsors: Representatives Takko, Orcutt, Kessler, Kretz and Blake.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/21/10, 1/29/10 [DPS].

Brief Summary of Substitute Bill

- Authorizes the creation of a Forestry Incentives Panel at the University of Washington that serves to develop landowner incentives to address the environmental objectives based on identified topics of anticipated Forest Practices Board attention.
- Directs the Forest Practices Board to consider existing incentive programs when initiating a new rulemaking process.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Blake, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Kretz, Liias, Pearson, Rolfes, Van De Wege and Warnick.

Minority Report: Do not pass. Signed by 3 members: Representatives Jacks, McCoy and Nelson.

Staff: Jason Callahan (786-7117).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Forest Practices Board (Board) is a 13-member independent panel chaired and administered by the Commissioner of Public Lands. The main duty of the Board is to adopt and maintain the forest practices rules. The forest practices rules are the administrative rules that govern all private and state forest practice activities and establish minimum standards for forest practices. They also provide procedures for the voluntary development of management plans, establish necessary administrative provisions, and allow for the development of watershed analyses [RCW 76.09.040].

There are 10 stated purposes of the forest practices rules [RCW 76.09.010]. These purposes include affording protection to forest soils, recognizing the public and private interest in profitable timber growing, avoiding unnecessary duplication of regulation, providing interagency and tribal coordination and cooperation, achieving compliance with water pollution laws, giving consideration to local planning efforts, and promoting permitting efficiency.

Summary of Substitute Bill:

The Board is directed to execute a memorandum of understanding with the University of Washington to develop a Forest Incentives Panel (Panel). Starting October 2010, and every two years thereafter, the Board must submit to the Panel a report that outlines a four-year work plan and identifies topics that the Board may address that could have economic consequences to landowners and the forest products industry.

The Panel is responsible for receiving the Board's report and attempting to develop non-regulatory incentives that encourage landowners to undertake efforts designed to address the environmental objectives of the anticipated topics identified by the Board. Any developed incentives must be recommended to the entity of state, local, or federal government that would be responsible for implementing the recommendation. The Board and the Panel are responsible for monitoring the resource protection outcomes of any implemented incentives.

The Board is required to consider the outcomes of existing voluntary incentive programs during future rulemaking processes and consider if the outcomes of the incentives match the desired outcomes of the proposed rules. The review of existing incentive programs is intended to inform rulemaking. The Board has final determination authority over whether compliance with their requirements has been met. The consideration of incentives may not be used to compel delay or discontinuation of a rulemaking process.

Substitute Bill Compared to Original Bill:

The substitute bill added a new stated purpose to the forest practices rules regarding maintaining forestry as a priority land use, required the Board to develop voluntary conservation measures prior to adopting new forest practices rules, and required the Board to select the alternative proposed rule that retains the greatest economic value to forestry if it was presented with one or more proposed rules that have substantially equivalent environmental protection.

Appropriation: None.

Fiscal Note: Available. Requested on substitute bill on February 1, 2010.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The state is losing its industrial forest land base, which should be a priority land use, at an alarming rate. Once a property is converted out of forestry it will never come back. The current Board has the right membership and is the right forum to address these issues.

The thoroughness of the forest practices rules has reached a pinnacle as to what they can accomplish, and there are more effective ways to protect public resources. There needs to be more tools in the toolbox to protect the working lands of the state. The Board should have the opportunity, not the mandate, to use voluntary conservation measures since incentives will help keep working foresters on the land. There are a few incentives available now, but the Board's progress towards approving their use moves at a glacial speed. There are many rules that allow the Board to stop a voluntary conservation measure, but none that help the Board get to yes.

The people most affected by the forest practices rules are everyday people. There are over 160,000 forest industry jobs in the state that need to be protected.

Recently the Board adopted a rule that was not the least burdensome to landowners. The Board looks for disproportionate impacts on small businesses, but does not consider the economic health of the entire industry.

(Opposed) This is an unnecessary bill that, if passed, would put federal Endangered Species Act (ESA) and Clean Water Act assurances in jeopardy. The Board already has the authority to use voluntary conservation measures and has done so at least three times. It is true that incentives for environmental compliance is a topic with a scope far larger than what is appropriate for the Board to discuss. Incentives may be the future, but first there must be established ground rules and sustainable markets.

Although voluntary conservation measures are allowed now, requiring them for every rule would greatly slow down the work of the Board. The adaptive management requirements of the ESA federal assurances require timely action by the Board, and the slowdown that would occur by having to first propose voluntary conservation measures would make timely action impossible. The proposed process would throw a monkey wrench into the Board's working and be used only to stop rulemaking from occurring. The vagueness of the language will only lead to needless debate and expensive litigation.

It should not be voluntary to follow a law. If it were voluntary, it's not clear what a state would do if people choose not to comply with the law. Citizens don't want the regulated community to only follow regulations if they are paid to do so.

The forest products industry agreed to the current forest practices rules. The complexity of the rules is a result of the industry negotiating away from the application of a simple rule. The Legislature has established a method for amending the forest practices rules and that process should be respected. It is a thorough and complicated process, but that was by design.

The Board is already required to balance the industry's well being with the protection of resources and the Administrative Procedures Act already requires the Board to consider the impact in small businesses and select the least burdensome option. The language in the bill is inconsistent with this mandate and could lead to putting economics before science. It is worth questioning if the forest products industry should be promoted over other industries.

Persons Testifying: (In support) Representative Takko, prime sponsor; Debora Munguia, Washington Forest Protection Association; Norm Schaaf, Meril & Ring; and Bill Little, Carpenters Industrial Council.

(Opposed) Chuck Turley, Department of Natural Resources; Stephen Bernath, Department of Ecology; David Whipple, Washington Department of Fish and Wildlife; Miguel Perez-Gibson, Washington Environmental Council; Peter Goldman, Washington Forest Law Center; and Dawn Vyvyan, Yakama Nation.

Persons Signed In To Testify But Not Testifying: None.